

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EDUARDO REYES and NATANAEL REYES,

Plaintiffs,

-against-

MARIUSZ BUDAK and ANETA BUDAK,

Defendants.  
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07 Civ. 4092 (SHS)

ORDER

SIDNEY H. STEIN, U.S. District Judge.

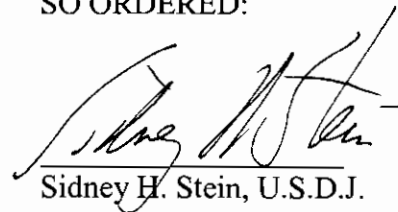
Plaintiffs Eduardo Reyes and Natanael Reyes commenced this action against defendants Mariusz Budak and Aneta Budak by filing a complaint in New York Supreme Court, New York County, on April 9, 2007. Defendants filed a Notice of Removal in this Court on May 22, 2007 – forty-three days after the complaint was filed – claiming that removal was appropriate pursuant to 28 U.S.C. §§ 1441, 1446. However, 28 U.S.C. § 1446(b) requires that the removal notice “be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based . . . .” 28 U.S.C. § 1446(b). The U.S. Supreme Court has held “that a named defendant’s time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, ‘through service or otherwise,’ after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service.” Murphy Bros. v. Michetti Pipe Stringing, 526 U.S. 344, 347-48, 143 L. Ed. 2d 448, 119 S. Ct. 1322 (1999).

This Court cannot determine whether defendants have properly removed this action within the appropriate time frame because the Notice of Removal does not specify

the date on which they were served with plaintiffs' complaint. Accordingly, defendants Mariusz Budak and Aneta Budak are directed to provide the Court on or before June 26, 2007 with proof of the date on which they were formally served with the summons and complaint in order for the Court to be able better to evaluate whether removal was proper.

Dated: New York, New York  
June 13, 2007

SO ORDERED:



Sidney H. Stein, U.S.D.J.